

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

**WRIT PETITION NO. 15104 OF 2023**

**IN THE MATTER OF:**

An application under Article 102 of the  
Constitution of the People's Republic of  
Bangladesh

And

**IN THE MATTER OF:**

***Md. Insaf Ali Osmani.***

-Petitioner

-vs.-

***The National Board of Revenue,  
represented by its Chairman, Rajshwa  
Bhaban, Plot No. F A/1, Agargaon, Dhaka-  
1207 and others.***

-Respondents.

Most. Morsheda Jahan, with  
Mr. Jahirul Haque Kislui, with  
Mr. Md. Robiul Hosan, with  
Ms. Shilpi Parvin, advocates.

..... for the Petitioner.

Mr. Md. Mohaddes-UI-Islam, DAG

..... For the respondent No. 02.

**Heard on: 19.11.2024 and 26.11.2024.**

**Judgment on: 04.12.2024.**

**Present:**

Mr. Justice Md. Bazlur Rahman

and

Mr. Justice Syed Mohammed Tazrul Hossain

**Md. Bazlur Rahman, J:**

At the instance of the petitioner, a Rule Nisi was issued the following  
terms;

*“Let a Rule Nisi be issued calling upon the respondents to show cause as  
to why the impugned order dated 17.04.2023 passed under Nothi No.  
৫(২০)৩৫৬/কাস/সিএডএফ/নাকুগাঁও/৯৯/২৩১৮ by the respondent No. 05 rejecting  
the application for renewing the Clearing and Forwarding Agent  
License of the petitioner (Annexure-D), shall not be declared to have  
been issued without lawful authority and is of no legal effect and also, as*

*to why the respondent Nos. 3,4 and 5 shall not be directed to renew the Clearing and Forwarding Agent License No. ২৩৫/এলসিসিএ/নাকুগাঁও/৯৯ dated 23.09.1999 in due compliance of law and/or passed such other or further order or orders as to this Court may seem fit and proper”.*

2. Short facts leading to the Rule are that the petitioner having Clearing and Forwarding business obtained trade license from respondent No. 4, the Joint Commissioner and the President, Licensing Authority, Customs, Excise and VAT Comissioinerate, Dhaka (North), House No. 21, Sector No. 07, Uttara, Dhaka-1230 and had been paying regularly Vat and other taxes in the name of his proprietorship firm in accordance with law. The license was first issued on 23.09.1999 and after the expiry of the duration a renewal application at the instance of the petitioner was submitted before the authority concerned on 08.10.2010 (Annexure-M) which left unaddressed by the authority till date without any action being taken thereon. The authority suspended on 08.01.2015 the operation of the earlier license of the petitioner (Annexure-E) upon allegations of evasion of the VAT and taxes amounting to Tk. 35, 64,112.00 (Thirty five lakhs sixty four thousands one hundred twelve) and an allegation of forgery was also brought against the petitioner in fabricating certain documents in connivance with some other importers and his own staffs. It is further stated that the petitioner continued to apply one after another for the renewal of his license including the last application being submitted on 11.04.2023 (Annexure-C) but the authority concerned paid no heed to the said application and lastly informed on 17.04.2023 (Annexure-D) that the application for renewal to be not acceptable due to pendency of criminal case against the petitioner, adding also that unless the criminal case be finally disposed of, the license would not be renewed. On being aggrieved by the said renewal refusal order

(Annexure-D) signed by Deputy Commissioner, respondent No. 05, the petitioner has approached this Court in writ jurisdiction and obtained the aforesaid Rule.

3. The Rule has been resisted by Mr. Md. Mohaddesh-UI-Islam, learned Deputy Attorney General, filing affidavit-in-opposition on behalf of respondent No. 02, contending therein, *inter alia*, that the petitioner was granted Clearing and Forwarding license but subsequently, he has violated the conditions of license prescribed in sub Rules-1-13 of Rule 17 of the Customs Agents (Licensing) Bidhimala, 2009. The license of a C&F Agent according to law will not be renewed or even may be temporarily suspended or permanently cancelled for violation of any Rules provided in the said Bidhimala. The petitioner has admitted the violation of the conditions of the said Rule and accepted the penalty passed by respondent No. 04. It is further agitated that the petitioner has alternative efficacious remedy against the alleged grievance and leaving it aside has moved this Court in writ jurisdiction which is not maintainable. Thus the Rule issued is liable to be discharged.
4. The learned counsel, Most. Morsheda Jahan, appearing on behalf of the petitioner, submits that the petitioner after having C&F License in his favour in the year of 1999 continued his business as such with full satisfaction of the Customs authority. After the first expiry of the date of his license he obtained renewal for several years. Thereafter, on 08.10.2010 the petitioner applied for further renewal of his license (Annexure-M) but the same was left unattended by the authority till date. The very allegations for which the license had been suspended on 08.01.2015 (Annexure-E) were not true at all. The learned counsel further submits that the petitioner has been falsely implicated by the customs authority

concerned for commission of forgery of the alleged documents and the evasion of tax and vat duties. Even the authority lodged an ejahar with relevant police station regarding similar facts against the petitioner and others which was first investigated by Detective Branch (DB), Sherpur and upon conclusion of the investigation, final report was submitted against this petitioner challenging which the informant made protest petition before the Court concerned. The protest petition was allowed by Court and the offence alleged were ordered to be further investigated by Police Bureau of Investigation (PBI) which after due completion of the investigation submitted final report against the petitioner on 10.02.2024. The learned counsel informs us that according to her knowledge, no further action has been taken by the authority against the final report touching the accusation of this petitioner. Learned counsel emphasizes that the application for renewal of petitioner's C&F license has been kept pending for a couple of years without any basis being established in the investigation held twice by the competent agencies. The act of the licensing authority is thus blatantly malafide and the petitioner is entitled to get his license instantly renewed in his favour.

5. Per contra, the learned Deputy Attorney General (DAG), appearing on behalf of respondent No. 02, submits that the authority concerned is abundantly empowered under the said Rules of the Bidhimala, 2009 to grant, renew, suspend or even to cancel any license issued by it. He further submits that the granting of license in favour of an agent does not necessarily bind the authority to renew a license again in agent's favour if the licensee is not otherwise found eligible for renewal thereof. The petitioner in the consideration of the customs authority has manifestly violated certain provisions of law which disqualified him to have the license further renewed. The learned DAG underscores that the pendency

of criminal proceeding and the continuation of the department proceeding are quite independent and the authority concerned in each case has discretion not to apply its power of renewal in favour of the petitioner. The learned counsel, however, concludes that the Rule does not have any merit and/is liable to be discharged.

6. We have extensively gone through the averments made in the writ-application along with those inserted in the affidavit-in-opposition and also examined the documents annexed by either side.
7. It, however, appears that the petitioner was admittedly granted C&F License in the year of 1999 and it had been being renewed from time to time till 2010, when necessary but the dispute arises when the application for renewal (Annexure-M to supplementary-affidavit) was submitted on 08.10.2010 before the authority. The learned counsel for the petitioner here underscores that keeping the renewal application pending for a couple of years indicates the malafide intention of the authority. Therefore, for the first time on 08.01.2015 (Annexure-E) the license of the petitioner has been ordered to be suspended for evasion of Vat and Tax on the allegation of forgery and tampering with documents being raised against the petitioner. It appears from the record that the application for renewal was submitted before the authority on 08.10.2010 and the FIR on the selfsame allegations was lodged with Sherpur Police Station on 06.03.2023 and after investigation thereof by DB, Sherpur, final report (true) against the petitioner was submitted on 10.02.2024 (Annexure-K). It further appears that upon protest petition by informant, a revenue officer of relevant customs office, the matter was sent by Court for further investigation by PBI, Sherpur. Similar investigation result of final report was submitted by PBI on 19.11.2024 (Annexure-P). On careful examination of both

the reports, it is evident that this very petitioner was not found liable in either investigation or no evidence was available against him touching the accusation levelled against him by the customs authority. It is clearly stated in the investigation report that evidences were available against the two other FIR named accuseds including admittedly one customs office staff and the other was a staff working under this petitioner. But the PBI investigation report reveals that FIR named accused Shamsur Rahman happens to be the working staff of another agency named BN Business Agency Limited, not the staff working under the petitioner. However, in criminal justice delivery system there is no scope to make one liable for the offence of another. If any staff working under the petitioner commits any offence may be prosecuted individually under relevant penal laws and then punished if offence proved on trial. The criminal liability of Shamsur Rahman despite his working found under the petitioner cannot be shifted to this petitioner making him responsible for the acts of his staff. Neither of the learned counsels of either side is able to make us sure whether the final report submitted against the petitioner has already been accepted by Court or not. So far as the documents before this Court are available in view of the alleged circumstances, we assume that the allegation for which the renewal of the certificate has been refused in favour of the petitioner merits no substance inasmuch as the learned Court below has so far no materials before it to take cognizance of any offence against the petitioner and till then he may be exonerated from any criminal liability and be deemed to be eligible to claim renewal of his license.

8. It appears from Annexure-D, the impugned order dated 17.04.2023, that the renewal application has been refused by the authority with

reference to sub-Rule 4 (Kha) of Rule 11 of the Customs Agent Licensing Bidhimala, 2009. The sub-Rule imposes an embargo upon the licensing authority not to renew license in case of criminal case being found pending against the licensee. But we have found in the preceding paragraphs that no criminal case is pending against the petitioner in any criminal Court. Even there is no immediate chance of pendency of any criminal case against the petitioner as final report has already been submitted against him in PS Case No. 04 dated 06.03.2024, corresponding to GR No. 48 of 2023, Nalitabari, Sherpur. In the case of **Nasiruddin Mahmud and others vs. Momtazuddin Ahmad and another reported in 4 BLD (AD)-97, 4 BCR (1984) (AD)-301**, it was held that proceeding before a Court starts when cognizance of offence is taken by it. In the instant case, no criminal proceeding is before the Magistrate who referred the case to the police for investigation. Since the renewal application has been left unattended since 2010 till date and since the FIR against the petitioner was first lodged in 2023, not from the date of the application for renewal, it appears that the action of the licensing authority is malafide and the application for renewal ought to have been attended by the authority before specific allegation was raised against him. Considering the rival submissions of the learned counsels, the position of law and other attending circumstances, we are of the view that the licensing authority concerned is quite in a propitious position to consider the

renewal application and is thereby directed to consider it positively within a period of thirty (30) days from the date of receiving a copy of this judgment and order.

9. In view of the above facts and circumstance, the Rule may be disposed of accordingly.
10. In the result, the Rule is disposed of with the above direction without any order as to costs.
11. Communicate the order at once.

.....  
(Md. Bazlur Rahman, J)

I agree

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(Syed Mohammed Tazrul Hossain, J)